



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

located at 4411 Early Road, Harrisonburg, VA

www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO ASSOCIATED ASPHALT PARTNERS, LLC

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.34:20, between the State Water Control Board and Associated Asphalt Partners, LLC, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Associated Asphalt" means Associated Asphalt Partners, LLC, a limited liability company authorized to do business in Virginia, and its members, affiliates, partners, and subsidiaries. Associated Asphalt is a "person" within the meaning of Va. Code [§ 10.1-1300/§ 10.1-1400/§ 62.1-44.3].
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
7. "Location" or "Site" means 770 Chestnut Grove Trail in Rockbridge County, a state roadway, the private residence at that location and the unnamed tributary to Ford Run where discharge occurred.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. *See* Va. Code §62.1-44.34:14.
10. "Operator" means any person who owns, operates, charts, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.
13. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
14. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 11 (Va. Code §§ 62.1-44.34:14 through 62.1-44.34:23) of the State Water Control Law addresses discharge of oil into waters.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
16. "Va. Code" means the Code of Virginia (1950), as amended.
17. "VAC" means the Virginia Administrative Code.
18. "Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

SECTION C: Findings of Fact and Conclusions of Law

1. Associated Asphalt is a person and operator of a vehicle that transports Oil to customers.
2. On July 27, 2015, in response to a report that oil, in the form of emulsified asphalt, had been discharged into an unnamed tributary of Ford Run, a state water, DEQ staff performed a site inspection at the Location. During the site inspection DEQ staff made the following observations:
 - a. A truck hauling a tank vessel owned and operated by Associated Asphalt had overturned at the Location. The driver reported that he had made a wrong turn and was attempting to back out to the main road when the road bank collapsed, causing the tank vessel to overturn and lose its load.
 - b. The tank vessel was carrying approximately 6000 gallons of liquid asphalt. An estimated maximum of 5000 gallons of asphalt was released to a tributary of Ford Run.
 - c. Emergency response crews from W.E.L., Inc., a containment and cleanup contractor hired by the truck owner, had installed a coffer dam approximately ½ mile from the discharge; this prevented the asphalt from traveling further downstream.
 - d. The property owner had been drawing water for residential use from the stream. The truck and tank vessel overturned on top of and broke the water supply lines from the stream to the residence.
 - e. Cattle also used the stream for drinking water. They were relocated by the property owner.
3. The Code of Virginia § 62.1-44.34:18.A states that “The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.”
4. On July 28, 2015, DEQ staff biologists performed a site inspection and observed that the asphalt had mostly hardened around the cobbles in the stream, effectively cementing them in place. Biologists counted nine dead salamanders (seven of which were *Desmognathus* sp. and two of which were *Gyrinophilus* sp.). Some caddis fly larvae (*Neophylax* sp.) in pupal cases were still alive, although some dead pupae were observed.
5. On July 29, 2015, DEQ issued Notice of Violation (NOV) No. 15-07-VRO-008 to Associated Asphalt for the violation cited in paragraphs C(2) and C(3) above.

6. On August 18, 2015, DEQ staff met with representatives of Associated Asphalt who stated that the containment and cleanup was almost complete. A temporary water supply was being provided to return water to the residence and the cattle that were impacted by the discharge.
7. On August 28, 2015, Associated Asphalt submitted additional information that stated that the actual volume of the release was 3,600 gallons. They submitted a Safety Data Sheet for the emulsified asphalt which stated that the maximum volume of petroleum product in the asphalt emulsion was 75%, resulting in a discharge of 2,700 gallons of oil.
8. Based on the results of July 27, 2015 inspection and the August 18, 2015 meeting, the State Water Control Board concludes that Associated Asphalt has violated Va. Code § 62.1-44.34:18, which prohibits the discharge of oil into or upon state waters, lands, or storm drain systems, as described in paragraph C(2) and C(3), above.
9. In order for Associated Asphalt to complete its return to compliance, DEQ staff and representatives of Associated Asphalt have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.34:20, the Board orders Associated Asphalt, and Associated Asphalt agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$15,624.90** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.
3. Reimburse DEQ **\$2,352.45** for oil discharge investigative costs within 30 days of the effective date of the Order;

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Associated Asphalt shall include its Federal Employer Identification Number, 20-5707237, with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Petroleum Storage Tank Fund (VPSTF). If the Department has to refer collection of moneys due under this Order to the

Department of Law, Associated Asphalt shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Associated Asphalt for good cause shown by Associated Asphalt, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 15-07-VRO-008 dated July 29, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Associated Asphalt admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Associated Asphalt consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Associated Asphalt declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Associated Asphalt to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Associated Asphalt shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Associated Asphalt shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Associated Asphalt shall notify the DEQ Regional Director verbally within 24

hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Associated Asphalt. Nevertheless, Associated Asphalt agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Associated Asphalt has completed all of the requirements of the Order;
 - b. Associated Asphalt petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Associated Asphalt.

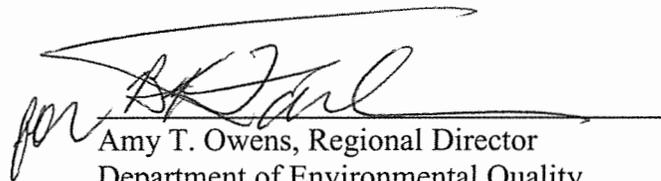
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Associated Asphalt from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Associated Asphalt and approved by the Department pursuant to this Order are incorporated into this

Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Associated Asphalt certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Associated Asphalt to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Associated Asphalt.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Associated Asphalt voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24th day of March, 2016.


Amy T. Owens, Regional Director
Department of Environmental Quality

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Associated Asphalt Partners, LLC voluntarily agrees to the issuance of this Order.

Date: 2-2-16 By: [Signature], VP Operations
Samuel L. Cannon, Jr. (Title)
Associated Asphalt Partners, LLC

Commonwealth of Virginia

City/County of Roanoke

The foregoing document was signed and acknowledged before me this 2nd day of February, 2016, by Samuel L. Cannon, Jr. who is VP-Operations of Associated Asphalt Partners, LLC, on behalf of the company.

[Signature]
Notary Public

7184195
Registration No.

My commission expires: 2/29/2016

Notary seal:

TERESA LANCASTER FERGUSON
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7184195
My Commission Expires 2/29/2016

APPENDIX A SCHEDULE OF COMPLIANCE

1. Site Stabilization

- a. Within 30 days of the effective date of this Order, Associated Asphalt shall submit to DEQ a detailed Corrective Action Plan (CAP) addressing how Associated Asphalt will permanently stabilize all disturbed areas of the Site. The CAP shall include a schedule of implementation and shall include a schedule of post-stabilization monitoring to ensure that the Site does not return to an erosive condition.
- b. Associated Asphalt shall respond to any DEQ Notice of Deficiency regarding the CAP within 30 days.
- c. Upon DEQ approval of the CAP, Associated Asphalt shall begin implementation of the CAP in accordance with the schedule contained therein. Any changes to the approved CAP or schedule shall not be initiated without advance notice to and approval by DEQ. Associated Asphalt shall complete the CAP in accordance with its terms.
- d. If the performance criteria specified in the approved CAP are not achieved at the end of the applicable monitoring period, then Associated Asphalt shall so advise DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, Associated Asphalt shall submit to DEQ for review and approval an alternative CAP within 60 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented in accordance with the schedule set forth in the alternative CAP.
- e. Within 30 days of the end of each calendar quarter, quarterly monitoring reports detailing progress of site stabilization, shall be submitted to DEQ.

2. Contact

Unless otherwise specified in this Order, Associated Asphalt shall submit all requirements of Appendix A of this Order to:

Karen Gail Hensley, P.E.
Enforcement Team Leader
Valley Regional Office
VA Dept. of Environmental Quality
4411 Early Road, Harrisonburg VA
Office: 540.574.7821 FAX: 540.574.7878
karen.hensley@deq.virginia.gov
Mail: P.O. Box 3000, Harrisonburg VA 22801